

## **DISCLAIMER**

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## **APPLICATION OF**

### **LAKE MONTICELLO SERVICE COMPANY**

**CASE NO. PUE-2001-00424**

**For amendment of its certificates  
of public convenience and necessity  
pursuant to Va. Code § 56-265.3 D**

### **REPORT OF HOWARD P. ANDERSON, JR., HEARING EXAMINER**

**May 23, 2002**

On July 26, 2001, Lake Monticello Service Company ("LMSC" or the "Company") filed an application with the State Corporation Commission ("Commission") to amend its certificates of public convenience and necessity<sup>1</sup> pursuant to § 56-265.3 D of the Code of Virginia. The current certificates designate the Lake Monticello residential subdivision and two adjacent areas as the Company's certificated service territory. In its application, the Company requests that its service territory be expanded to include property adjacent to its current service territory.<sup>2</sup> The description of the area requested is as follows:

To the south, the Company's service territory would be expanded to parallel Route 600 from the intersection of Route 53 and Route 600 to the Company's current territory on Route 600. The Company's service territory would be expanded to the east to parallel Route 618. To the west, the service area would be expanded to parallel Route 53 from the intersection of Route 53 and Route 600 to the intersection of Route 53 and Route 618. Upon addition of these areas, the Company's service territory would include an area generally bounded by Routes 53, 600 and 618. . . .

The Company also seeks to include approximately 10.4 acres of land to the south of Route 600 which is outside, but adjacent to, the general boundaries described [herein].<sup>3</sup>

The Company proposes no changes to its tariffs, rates, rules and regulations on file with the Commission.

On September 28, 2001, the Commission issued an Order for Notice and Comment and/or Requests for Hearing ("Commission Order") directing the Company to publish notice of its application and to make its application available for public inspection. The Commission's Order

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<sup>1</sup>Certificate Nos. W-197(a) and S-64(a).

<sup>2</sup>Exhibit A of this Report is a map of the area requested by the Company to be included in its service territory. This area is generally bounded by State Routes 53, 600, and 618.

<sup>3</sup>Company Application at 1, 2.

also gave any interested person the opportunity to file comments with the Commission or to request a hearing on the application.

Noting that it had received a number of requests for hearing from individuals and interested entities, the Commission issued an order on December 14, 2001, appointing a Hearing Examiner to conduct all further proceedings, establishing a procedural schedule, and setting a hearing for February 12, 2002. A Notice of Participation was filed on January 22, 2002, by the Lake Monticello Owners' Association ("LMOA"). By Hearing Examiner's Ruling of February 6, 2002, Catherine Neelley's Motion to File Notice of Participation Out of Time was granted.

At the hearing on February 12, 2002, Anthony Gambardella, Esquire, appeared on behalf of the Company; Rebecca W. Hartz, Esquire, appeared on behalf of Commission Staff; and Catherine Neelley appeared *pro se*. Appearances were also entered by Richard P. Dowswell, general manager of LMOA and Joseph F. Galvin, president of the LMOA Board of Directors.<sup>4</sup> Proof of service was made a part of the record. A transcript of the proceedings is filed with this Report.

### *Public Witnesses*

Four public witnesses spoke at the hearing. Cabell Lawton, director of planning and community development and Assistant County Administrator for Fluvanna County, provided information on the County's comprehensive plan adopted in November 2000. Mr. Lawton explained that a significant level of growth is anticipated for the Lake Monticello planning area. The County's goal is to develop an integrated water and sewer system for the Lake Monticello planning area. Mr. Lawton testified that the Company's application is consistent with the County's comprehensive plan.<sup>5</sup> On cross-examination by Ms. Neelley, Mr. Lawton confirmed that the Lake Monticello planning area is the fastest growing part of the County and that most of that growth is within the Lake Monticello community which is within the Company's current service territory.<sup>6</sup>

Marilee Blakely, a resident of Fluvanna County but not of Lake Monticello, expressed concern about the low water tables and low flows in the Rivanna River.<sup>7</sup> Ms. Blakely referred to a friend, Minnie McGehee, author of a book about the Rivanna River, in voicing her concerns about this scenic river. Ms. McGehee could not attend the hearing because of an infirmity, but Ms. Blakely relayed her concerns regarding the Company's water withdrawals from the Rivanna River.<sup>8</sup>

Norma Hutner, a member of the Fluvanna County Board of Supervisors and a resident of Lake Monticello, explained that the Lake Monticello community constitutes approximately 45 percent of Fluvanna County's total population and there are more lots to be developed. In addition, the County has recently rezoned areas around Lake Monticello as commercial and there are plans for shops, offices and restaurants to be built in these areas. Ms. Hutner fears the County is going to permit more development than the water resources can accommodate. Ms. Hutner points out that Fluvanna County is experiencing a severe drought and has recently been declared a disaster area

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<sup>4</sup>Mr. Dowswell and Mr. Galvin did not make statements or otherwise participate in the proceeding.

<sup>5</sup>Tr. 5, 6. The County's comprehensive plan is Exhibit CL-1.

<sup>6</sup>Tr. 10.

<sup>7</sup>The Company currently holds a permit to withdraw water from the Rivanna River.

<sup>8</sup>Tr. 12, 13.

because of inadequate rainfall. Ms. Hutner states that, in some places, the riverbed of the Rivanna River is exposed in midstream. Ms. Hutner explained that the Company is committed to full build out at Lake Monticello and speculated that eventually, there will not be sufficient water to support the growth occurring in Fluvanna County.<sup>9</sup> Specifically, Ms. Hutner asks the Commission to deny the application at this time.<sup>10</sup>

Leonard Gardner, a twenty-three year resident of Lake Monticello and a member of the Fluvanna County Board of Supervisors, spoke in favor of the Company's application. Mr. Gardner stated that the Lake Monticello development currently has a population of approximately 8,000 residents. This number represents about 70 to 75 percent of the total potential residents. Mr. Gardner also testified that the Rivanna River is subject to highly variable flows and that it quite often appears to have a low flow. He concluded his remarks by stating that many of his constituents support the Company's planned extension of service.<sup>11</sup>

### *Testimony and Exhibits*

Kevin T. Read, vice president of AquaSource Utility, Inc. ("AquaSource")<sup>12</sup> for the northeast region,<sup>13</sup> provided background for the current application by explaining that the LMSC is a Virginia public service company providing water and sewer service to the Lake Monticello community. In 1998, LMOA voted to sell the LMSC to AquaSource. As a condition of the sale, AquaSource agreed to complete construction of the water distribution system and the sewer collection system. AquaSource further agreed to provide service to the platted residential lots at Lake Monticello, forty-five approved condominiums at Marina Point and property owned by LMOA within Lake Monticello. The terms of the sale do not preclude the Company from expanding outside the Lake Monticello development. Mr. Read maintains that, while the Company's highest priority is to provide service to the Lake Monticello development, expansion of the Company's service territory is in the best long-term interests of LMSC and its customers.<sup>14</sup>

LMSC currently provides service to approximately 3,340 residential equivalent units and a few commercial connections. The annual average per connection usage is approximately 155 to 160 gallons per day ("gpd"). The Lake Monticello development is expected to reach complete build out in the next ten years with approximately 4800 residential equivalent units. At current usage rates, the Lake Monticello community will use approximately 283 million gallons of water per year when complete build out occurs. LMSC holds a water withdrawal permit to withdraw 400 million

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<sup>9</sup>Tr. 15 - 28. Ms. Hutner also states that a major issue in her campaign for election to the Board of Supervisors was the rate of growth in Fluvanna County. Ms. Hutner supported slow growth and she attributes her successful election largely to this issue.

<sup>10</sup>Tr. 28.

<sup>11</sup>Tr. 35.

<sup>12</sup>AquaSource is a Texas based company that purchased LMSC in 1998.

<sup>13</sup>Mr. Read's duties include responsibility for the operations and management of AquaSource subsidiaries in Virginia, New Jersey, New York, Connecticut, Rhode Island and Massachusetts.

<sup>14</sup>Ex. No. KTR-4, at 2, 3.

gallons of water per year from the Rivanna River.<sup>15</sup> LMSC has two ground level water storage tanks with a capacity of 2.75 million gallons for use during periods of peak usage.<sup>16</sup>

Typically, LMSC will return more water to the Rivanna River than it takes out. This occurs because groundwater enters the network of wastewater collection pipes through cracks and leaks, a process referred to as infiltration. Infiltration is a common problem for wastewater collection systems and LMSC is no exception. LMSC has an ongoing program to repair leaks in the pipes and manhole covers. While infiltration cannot be completely eliminated, LMSC expects to reduce it to an acceptable level.

The Fluvanna County comprehensive plan identifies the area requested in this application for potential commercial and residential development. LMSC is currently in the process of expanding its wastewater treatment facilities<sup>17</sup> to a capacity of 1.2 MGD to meet anticipated demand. An incremental increase in capacity to 1.5 MGD is planned to serve anticipated growth in the area for the next ten years.<sup>18</sup>

Certain public witnesses expressed concern regarding stream flows in the Rivanna River and whether the flows are adequate to serve LMSC's needs. In the permit application process, the Virginia Department of Environmental Quality and the U.S. Army Corps of Engineers ("Corps of Engineers") use drought river conditions to determine availability of water. The Corps of Engineers determined that the average flow in the Rivanna River is 400 MGD and the expected daily minimum flow in a thirty-year period is 10 MGD. The river flows are highly variable, ranging in the last twelve months from 4000 MGD to 26 MGD. Mr. Read testified that, even under the twelve-month low flow of 26 MGD, LMSC's permitted withdrawals amount to less than ten percent of the river flow.<sup>19</sup> And, as noted above, LMSC typically returns more water to the river than it takes out.<sup>20</sup>

In conclusion, Mr. Read stated that the Company has an abundant available water supply to meet its obligation to Lake Monticello and that this obligation is the Company's top priority.<sup>21</sup> Mr. Read stated that an expanded customer base will have the effect of reducing upward pressure on rates because of economies of scale.<sup>22</sup>

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<sup>15</sup>Special Condition F of the permit limits the maximum instantaneous withdrawal from the river to 2,683 gallons per minute ("gpm"). This withdrawal rate cannot be exceeded because the pumps at the water treatment plant have a pumping capacity of only 700 gpm. These pumps are being replaced with pumps that have a capacity of 833 gpm. Special Condition G limits the maximum daily withdrawal from the river to 2.576 million gallons. The maximum daily withdrawal to date to serve LMSC has been 920,000 gallons to serve approximately 3200 customers. Conservative estimates of projected maximum daily withdrawals at full build out of the Lake Monticello community are 1.438 MGD. Ex. KTR-4, at 5, 6.

<sup>16</sup>Ex. No. KTR-4, at 4; Ex. No. MAT-9, at 4.

<sup>17</sup>At the wastewater treatment plant, the wastewater is treated by a biological process in a series of tanks and is then disinfected using ultraviolet radiation before it is returned to the river.

<sup>18</sup>Ex. No. KTR-4, at 9.

<sup>19</sup>The Company's Virginia Water Protection Permit limits the average daily withdrawal from the Rivanna River to 1.09 million gallons. Ex. No. MAT-9, at 5.

<sup>20</sup>Ex. No. KTR-4, at 9.

<sup>21</sup>*Id.* at 3.

<sup>22</sup>*Id.* at 10.

Catherine Neelley presented testimony and requested that the application be denied unless the Company can demonstrate that it has sufficient plant and resources to provide service to Lake Monticello at full build out prior to extending its service area. Ms. Neelley states that the stock purchase agreement requires AquaSource to meet the needs of Lake Monticello as its primary customer prior to the sale of water to outside concerns. Ms. Neelley questions the effect of the proposed expansion on rates. Lake Monticello residents are concerned that if the application is granted, Lake Monticello's water supply will be severely compromised, if not depleted.

Ms. Neelley explained that no one objects to the Company expanding its business or customer base when it does not adversely affect the public interest and the Company has met its obligations to LMOA and Lake Monticello property owners. Ms. Neelley agrees that the stock purchase agreement recognizes the desirability of expansion by the Company as long as there are adequate resources and there is no effect on current rates.<sup>23</sup>

Section 56-265.3 D of the Code of Virginia provides:

If the Commission finds it to be in the public interest, upon the application of a holder of a water or sewer certificate, such certificate may be . . . amended after such reasonable notice to the public and opportunity to be heard as the Commission by order may prescribe. The Commission may authorize the . . . amendment of the certificate subject to such restrictions as the Commission finds will promote the public interest.

I find the Company has provided adequate proof that the expansion of its service territory is in the public interest. Company witness Read testified on rebuttal that, AquaSource is willing and able to expand the maximum level of service and facilities to include other areas of Fluvanna County while continuing to provide the facilities and service in the Lake Monticello community. Mr. Read confirmed that "AquaSource is committed to improving the service for the current residents of the Lake Monticello community and future residents as that community expands."<sup>24</sup>

Staff witness Tufaro testified that, unlike most water companies, AquaSource has the financial ability to construct the required facilities as it becomes necessary to provide reliable service.<sup>25</sup> Further, the Company does not propose any changes to its tariffs or rates on file with the Commission. Mr. Tufaro found the Company's application to amend its certificate will not have an adverse impact on the reliability of the Company's provision of water and wastewater services. Specifically, Staff found the Company currently has sufficient facilities to provide adequate water services to current customers and to future customers in the Lake Monticello development at full build out. With its plans to abate the infiltration problem and upgrade its wastewater facility, the Company should have sufficient wastewater capacity to serve its current and future customers.

The Company has further shown that it has adequate water resources to provide additional service without jeopardizing existing obligations to the Lake Monticello community. The Company

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<sup>23</sup>Ex. No. CEN-8.

<sup>24</sup>Ex. No. KTR-5, at 2.

<sup>25</sup>Tr. 132, 133.

is constructing facilities to expand its water treatment plant to increase the existing capacity to 1.2 MGD to meet anticipated demand. The Company is also increasing the pumping capacity at the intake structure to a maximum instantaneous withdrawal of 833 gpm (the Virginia Water Protection Permit limit is 2,683 gpm). The Company currently holds a Virginia Pollution Discharge Permit allowing it to discharge up to 600,000 GPD of effluent into the Rivanna River. The Company eventually plans to upgrade its wastewater treatment facility to a capacity of 1.5 MGD.<sup>26</sup> Coupled with its ongoing efforts to address the infiltration problems, the Company clearly will have enough capacity to meet the needs of its current and future customers in the Lake Monticello development. Specifically, Staff believes that with planned capacity additions, the Company will be able to serve the Lake Monticello development at full build out plus approximately 2,000 additional equivalent residential connections. Staff calculates that the additional territory should yield 1,500 equivalent residential connections in the next ten years.<sup>27</sup>

Staff believes that the Company's application will not have an adverse impact upon the reliability of its water and wastewater service and that it will not have a negative impact on rates. Having found that this application is in the public interest, I now find that the Company should be issued new certificates of public convenience and necessity incorporating the requested service territory. Accordingly,

**I RECOMMEND** the Commission enter an order that:

1. **ADOPTS** the findings made herein;
2. **GRANTS** Lake Monticello Service Company new certificates of public convenience and necessity incorporating the requested service territory; and
3. **DISMISSES** this case from its docket of active cases.

### **COMMENTS**

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Howard P. Anderson, Jr.  
Hearing Examiner

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<sup>26</sup>Ex. No. MAT-9, at 6, 7.

<sup>27</sup>Id. at 10.